FILE COPY.

Office Supreme Court U. S.
FILED
NOV 6 1905
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1905.

Nos. 40 and 217.

ECLIPSE BICYCLE COMPANY, APPELLANT,

vs.

WILLIAM M. FARROW.

BRIEF FOR APPELLANT ON MOTION OF APPELLEE TO DISMISS.

A. S. WORTHINGTON,
HOWARD L. OSGOOD,
C. SCHUYLER DAVIS,
Attorneys for Appellant

JUDD & DETWEILER, (INC.), PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1905.

Nos. 40 and 217.

ECLIPSE BICYCLE COMPANY, APPELLANT,

vs.

WILLARD M. FARROW.

BRIEF FOR APPELLANT ON MOTION OF APPELLEE TO DISMISS.

Upon an examination of the parts of the record referred to in the brief for the appellee in support of the motion to dismiss, it will be seen that all that appears is that the Eclipse Bicycle Company transferred its visible assets to another corporation. It is not dissolved unless such a transfer by a corporation *ipso facto* puts an end to its existence. We deem it unnecessary to refer to authorities to establish the proposition that a corporation, after it has sold its assets and ceased to transact business, continues in existence and may sue and be sued.

The case is covered by a statute of New York, under the laws of which State the Eclipse Bicycle Company was incorporated, a quotation from which is as follows:

"Said corporation shall nevertheless continue in exist-
"ence for the purpose of paying, satisfying and discharg-
"ing any existing debts or obligations * * * and
"may sue and be sued for the purpose of enforcing such
"debts or obligations, until its business and affairs are
"fully adjusted and wound up."

The foregoing is quoted from section 57 of the New York Stock Corporation Law (Laws of 1896, ch. 932, as amended by Laws of 1900, ch. 760). This is the only statute of New York State relating to or permitting the dissolution of a corporation without the order or decree of a court. In all other cases the voluntary or involuntary dissolution of a New York corporation can occur only by petition to a court of competent jurisdiction or by action in such a court, brought either by the attorney general on the part of the State or by a private person authorized by the statutes.

It follows that the appellant is still in existence for the purposes of this suit and appeal.

It will be seen also from reading the testimony of Mr. Whittier, to which counsel refer in their brief, that the transfer of the assets of the Eclipse Bicycle Company to the Eclipse Manufacturing Company was not made, as counsel assume, for the purpose of impeding the collection of this debt or any other claim against the Eclipse Bicycle Company. On the contrary, by a letter which is in evidence, dated January 6, 1900, written by Mr. Fulton, the president of the Eclipse Bicycle Company, to the Corporation Trust Company, of Dover, Delaware, it appears that on the date of that letter, and for some time prior thereto, the Eclipse Bicycle Company was taking

steps towards the organization of a new corporation, under the laws of the State of Delaware, to purchase the assets of the Eclipse Bicycle Company (407).

This letter was written many months before the first decision of the Court of Appeals. The first opinion of that court was filed on June 5, 1900.

Again, even if the Court should find that the Eclipse Bicycle Company was dissolved in 1900 by the transfer of its visible assets to the Eclipse Manufacturing Company, then it would necessarily follow that the decree below is void, because entered against a corporation which had no existence.

We wish, finally, to call the attentaon of the Court to a fact which does not appear in the record, but which we assume will be admitted by counsel for the appellee, that is, that on about the 3d day of August, 1905, the appellee, Farrow, in part through the same counsel representing him now in this Court, instituted a suit in the Supreme Court of the County of Chemung, in the State of New York against the Eclipse Bicycle Company and the other defendants, the object of which suit was to enforce the collection of the decree against the Eclipse Bicycle Company in this case. Said complaint, among other things, contains the following allegation:

"That at all the times hereinafter mentioned the defendant, the Eclipse Bicycle Company, was, and now is, a corporation duly organized, created and existing under and by virtue of the laws of the State of New York."

Said complaint asks, among other things, for the following relief:

"That the successive transfers of the said property, as hereinbefore alleged, be declared to be fraudulent and void, as to this plaintiff, and that the defendant, said Eclipse Bicycle Company, be declared to be the owner of all the said property, with the accretions thereof the additions thereto, and the substitutions therefor."

A. S. WORTHINGTON,
HOWARD L. OSGOOD,
C. SCHUYLER DAVIS,
Attorneys for Appellant